

Message Text

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XMB-07 OPIC-12 LAB-06 SIL-01 AGR-20 FMC-04 HEW-08

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INFO USDOC WASHDC

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E.O. 11652: N/A

TAGS: EFIN, IN

SUBJ: GOI ANNOUNCES FOREIGN INVESTMENT GUIDELINES

REF: NEW DELHI 10015

SUMMARY: NEW GUIDELINES FOR IMPLEMENTATION OF FOREIGN EXCHANGE REGULATIONS RECENTLY PRESENTED TO PARLIAMENT CONTAIN NO SURPRISES. ALL FOREIGN SUBSIDIARIES WITH OUTSIDE EQUITY HOLDINGS OF 40 PERCENT OR MORE WILL NOW BE SUBJECT TO PROVISIONS OF INDIAN COMPANIES ACT. THOSE MANUFACTURING COMPANIES IN PRIORITY OR EXPORT ORIENTED INDUSTRIES WILL BE REQUIRED TO ACCEPT 26 PERCENT INDIAN EQUITY. OTHER MANUFACTURERS AND ALL TRADING COMPANIES MUST INDIANIZE TO THE EXTENT OF 60 PERCENT. THERE ARE SOME PROVISIONS WHICH WILL SOFTEN THE EFFECT OF THE GUIDELINES BUT SEVERAL AMERICAN COMPANIES WILL HAVE TO DILUTE THEIR EQUITY. END SUMMARY.

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1. ON DECEMBER 20, THE FINANCE MINISTRY PRESENTED TO PARLIAMENT GUIDELINES FOR IMPLEMENTATION OF THE RECENTLY PASSED AMENDMENTS TO THE FOREIGN EXCHANGE REGULATIONS (FER) (SEE REFTTEL).

2. ONLY THOSE INDIAN COMPANIES OR INDIAN BRANCHES OF FOREIGN COMPANIES WITH FOREIGN EQUITY PARTICIPATION OF 40 PERCENT OR MORE ARE SUBJECT TO THE FER. THE FOLLOWING IS AN OUTLINE OF TY GUIDELINES:

A) ALL BRANCHES OF FOREIGN COMPANIES COVERED BY THE FER WILL BE REQUIRED TO CONVERT INTO INDIAN COMPANIES (INCORPORATE UNDER THE ARTICLES OF THE INDIAN COMPANIES ACT).

B) COMPANIES ENGAGED IN MANUFACTURING IN THE SOCALLED "CORE SECTOR" (PRIORITY ITEMS SUCH AS STEEL, MACHINE TOOLS, HEAVY CHEMICALS, HEAVY ELECTRICAL EQUIPMENT SPECIFIED IN APPENDIX I OF THE INDUSTRIAL LICENSING POLICY OF FEBRUARY 1973) OR EXPORTING AT LEAST 60 PERCENT OF THEIR PRODUCTION WILL BE REQUIRED TO ACCEPT A MINIMUM INDIAN EQUITY OF 26 PERCENT. (UNDER INDIAN COMPANY LAW, 3/4 MAJORITY VOTE REQUIRED FOR MOST BOARD DECISIONS AND 26 PERCENT GIVES INDIAN SHAREHOLDERS EFFECTIVE VETO POWER). ANY NECESSARY DILUTION OF FOREIGN EQUITY WILL BE CARRIED OUT OVER A SPECIFIED PERIOD AS AND WHEN THE COMPANY APPLIES FOR AN EXPANSION.

C) MANUFACTURING COMPANIES NOT PREDOMINANTLY IN THE CORE SECTOR (I.E., WITH CORE SECTOR PRODUCTION OF LESS THAN 75 PERCENT BY VALUE OF TOTAL PRODUCTION OR A NON-CORE SECTOR PRODUCTION OF MORE THAN 50 MILLION RUPEES ANNUALLY) AND EXPORTING LESS THAN 60 PERCENT OF PRODUCTION WILL BE REQUIRED TO ACCEPT A MINIMUM INDIAN EQUITY OF 60 PERCENT. THOSE COMPANIES NOT WISHING TO DILUTE FOREIGN EQUITY TO THE NECESSARY LEVEL (40 PERCENT) WOULD BE REQUIRED TO SHIFT WITHIN A SPECIFIED PERIOD TO PREDOMINANTLY CORE SECTOR OR EXPORT ORIENTED (60 PERCENT) ACTIVITIES.

D) THOSE COMPANIES ENGAGED PREDOMINANTLY IN INTERNAL TRADING AND COMMERCIAL ACTIVITIES WILL BE REQUIRED TO ACCEPT A MINIMUM INDIAN EQUITY OF 60 PERCENT. NO INCREASES IN FOREIGN EQUITY POSITION OF EXISTING TRADING COMPANIES WILL BE ALLOWED. THOSE TRADING COMPANIES NOT WISHING TO DILUTE EQUITY TO THE EXTENT NECESSARY WILL BE REQUIRED TO EITHER SHIFT THEIR ACTIVITIES AS IN (C) ABOVE OR CEASE OPERATIONS IN INDIA WITHIN A PERIOD SPECIFIED BY THE RESERVE BANK OF INDIA.

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E) MANUFACTURING COMPANIES SELLING PRODUCTS IN INDIA NOT MANUFACTURED BY THEM WILL BE ALLOWED TO CONTINUE OPERATIONS PROVIDED: (1) THESE PRODUCTS ARE RELATED TO THE COMPANIES' MANUFACTURING LINE; (2) TRADING ACTIVITY FORMS NO MORE THAN 25 PERCENT OF EACH COMPANY'S BUSINESS; AND (3) THE COMPANIES' TRADEMARKS ARE NOT USED ON THESE ITEMS.

F) CONSTRUCTION COMPANIES, PLANTATIONS (OTHER THAN TEA, WHICH WILL BE TREATED AS AN EXPORT INDUSTRY), CONSULTANTS OF

ALL TYPES, AND ALL OTHER COMPANIES (EXCEPT AIRLINES AND SHIPPING COMPANIES WHICH WILL BE TREATED ON THE BASIS OF RECIPROCITY) WILL BE REQUIRED TO ACCEPT A MINIMUM INDIAN EQUITY OF 60 PERCENT.

G) EXCEPTIONS:

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I) COMPANIES WHICH EXPORT 100 PERCENT OF THEIR PRODUCTION MAY NOT BE REQUIRED TO ACCEPT FULL 26 PERCENT INDIAN EQUITY PARTICIPATION;

II) COMPANIES EMPLOYING SOPHISTICATED TECHNOLOGY NOT AVAILABLE LOCALLY, WHICH ORDINARILY WOULD HAVE TO ACCEPT 60 PERCENT INDIAN EQUITY, WOULD ON A CASE BY CASE BASIS BE TREATED AS IN (A) ABOVE (APPLIES TO MANUFACTURING, TRADING, CONSTRUCTION AND CONSULTANCY COMPANIES).

3. COMMENT: BY INDIAN STANDARDS, THE GUIDELINES ARE RELATIVELY CLEAR. THE GOI IS ALREADY DEALING WITH NEW APPLICANTS FOR JOINT VENTURE LICENSES ON THE BASIS OF THE PRINCIPLES LISTED

ABOVE AND THE GUIDELINES CONTAIN NO SURPROSES. SEVERAL AMERICAN SUBSIDIARIES WILL BE REQUIRED TO DILUTE THEIR EQUITY, ESPECIALLY THOSE WITH MORE THAN 74 PERCENT FOREIGN HOLDINGS (ABBOTT LABORATORIES, AMERICAN FLANGE, CORN PRODUCTS, COCA-COLA, CUQTER WALLACE, CHEESEBOROUGH PONDS, COLGATE PALMOLIVE, DODGE AND SEYMOUR, LIMITED OFFICIAL USE

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DOW CHEMICALS, ESSO, ETHNOR, EX-CELL-O, FIRESTONE, GULF OIL, IBM, ITT, INGERSOLL-RAND, GENERAL ELECTRIC, JOHNSON AND JOHNSON, LUDLOW JUTE, MONSANTO, MULLER AND PHIPPS, PARKE DAVIS, PFIZER, SINGER, AND WYETH LABS). AT LEAST 21 U.S. COMPANIES ENGAGED PURELY IN TRADING ACTIVITIES WILL ALSO HAVE TO MAKE SOME HARD DECISIONS IN THE NEXT FEW MONTHS. AS USUAL, THERE ARE SOME SOFTENING PROVISIONS, SUCH AS THE POSSIBILITY OF SHIRTING TO CORE SECTOR OR PROMISING TO INCREASE EXPORTS. (THE GOI HAS NEVER ESTABLISHED PENALTIES FOR FAILURE TO MEET EXPORT COMMODITIES.) THE POLICY ON EXCEPTIONS FOR SOPHISTICATED TECHNOLOGY COULD ALSO TURN OUT TO BE VERY FLEXIBLE.

4. WE WIGA REPORT ON NEGOTIATIONS BETWEEN GOI AND INDIVIDUAL U.S. COMPANIES AS THEY TAKE PLACE. WE ARE PREPARING AN UNCLASSIFIED UPDATE TO OUR A-79 OF FEBRUARY 28, 1973 (ESTABLISHING A BUSINESS IN INDIA-BRIEFING PAPER ON JOINT VENTURE APPLICATIONS), WHICH THE DEPARTMENT OF STATE AND COMMZVCE MAY WISH TO DISTRIBUTE TO INTERESTED BUSINESSMEN.

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